

# ITEL

## Pullman

November 1, 1989

9-310A012 (3)

### Itel Rail Corporation

55 Francisco Street  
San Francisco, CA 94133  
(415) 984-4000  
(415) 781-1035 Fax

RECORDATION NO.

FILED 1485

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

NOV 6 1989 -12 00 AM

INTERSTATE COMMERCE COMMISSION

Re: Schedule No. 13 to Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation and Hartford and Slocomb Railroad Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

Please record this Schedule under Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation, as successor in interest to both Itel Rail Corporation and Itel Railcar Corporation, and Hartford and Slocomb Railroad Company, which was filed with the ICC on May 13, 1988, under Recordation No. 15642.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Hartford and Slocomb Railroad Company (Lessee)  
P.O. Box 2243  
Dothan, Alabama 36302

This Schedule covers thirty-eight (38) 70-ton, Plate C, RBL boxcars bearing reporting marks HS 11219-11346 (n.s.) subject to an Assignment Agreement dated September 6, 1989, with Modesto and Empire Traction Company, as Assignee.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*  
Patricia Schumacker  
Legal Assistant

NOV 6 1989 - 12 00 AM

SCHEDULE NO. 13 INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE NO. 13 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of May 5, 1988 as amended between ITTEL RAIL CORPORATION and as lessor ("Lessor") and HARTFORD AND SLOCOMB RAILROAD COMPANY as lessee ("Lessee"), is made this 23rd day of October, 1989.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 13, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description of Cars	Car Reporting Marks and Numbers	No. of Cars
RBL	70-Ton, Plate C Insulated Boxcars	HS <del>11219 to 11284(NS)</del> <u>11320 to 11346(NS)</u>	38

3. A. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for three (3) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Initial Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
- B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement shall automatically be extended from calendar month to calendar month, for a period not to exceed twenty-four (24) calendar months (each such calendar month an "Extended Term"). Provided that the Cars are not subject to the assignment agreement dated September 6, 1989 ("MET Assignment")

between Lessee as assignor ("Assignor") and Modesto and Empire Traction Company as assignee ("Assignee"), a copy of which is attached hereto as Exhibit B, Lessor may terminate the Agreement at anytime during the Initial Term or any Extended Term as to some or all of the Cars described in this Schedule by providing not less than ten (10) days' prior written notice to Lessee.

4. When a Car has been remarked, it shall be moved to the railroad lines of Assignee at no cost to Lessee. Lessee agrees to pay the rent set forth in the Agreement notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereinunder. In order to move the Cars to Assignee's railroad line and to ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.
5. Lessor consents to Lessee's entering into the MET Assignment Agreement provided that Lessor shall perform Lessee's duties under the MET Assignment Agreement, except the duties described in paragraph six therein, which shall be performed by Lessee, that the Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the MET Assignment Agreement, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the MET Assignment Agreement to any party designated by Lessor.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except those delegated to Lessee as set forth in Subsection 5.B. of the Agreement. With respect to the Cars listed in this Schedule, Exhibit C attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars.

Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or any Extended Term, effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the July 1989 edition of The Official Railway Equipment Register, as may be updated from time to time.
- (iii) "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

B. Lessor shall receive \_\_\_\_\_ of the MET Assignment Agreement.

C. Upon the expiration or early termination of the MET Assignment Agreement, Lessor shall \_\_\_\_\_ the Eligible Lines.

D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn

for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 8.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.

(ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

E. Except as provided in this Schedule, any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the Revenues earned by the Cars.

F. If any Car has remained on Lessee's property while not subject to the MET Assignment because Lessee has not given preference to the Car as specified in Subsection 3. B. of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property due to such failure, with each Car travelling one hundred (100) miles per day.

9. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

10. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

HARTFORD AND SLOCOMB  
RAILROAD COMPANY

BY: *DM Hayes*

BY: *C J McHugh*

TITLE: *President and Chief Executive Officer*

TITLE: *President*

DATE: *October 23, 1989*

DATE: *9-6-89*

**EXHIBIT A  
CERTIFICATE OF DELIVERY DATE**

Exhibit A to Schedule No. 13 dated as of \_\_\_\_\_  
between ITEL RAIL CORPORATION ("Lessor") and HARTFORD AND SLOCOMB  
RAILROAD COMPANY ("Lessee"), to Lease Agreement as amended, dated  
as of May 5, 1988.

HS Reporting Marks and Number

Date Delivered

**ITEL RAIL CORPORATION**  
Authorized Representative

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT B  
AGREEMENT FOR ASSIGNED SERVICE

THIS AGREEMENT FOR ASSIGNED SERVICE ("Assignment Agreement") is made and entered into as of this 29th day of August, 1989, between **HARTFORD AND SLOCOMB RAILROAD COMPANY** ("Assignor") and **MODESTO AND EMPIRE TRACTION COMPANY** ("Assignee").

Assignor and Assignee agree as follows:

1. Assignor shall supply Assignee with the following equipment (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mechanical Designation	Description	Reporting Marks and Numbers	No . of Cars
RBL	70-Ton, Plate C Insulated Boxcars	HS _____ - _____	38

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10.
3. The term ("Initial Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines after the full execution of this Assignment Agreement ("Delivery") and shall expire as to all of the Cars on March 1, 1991. Upon the Delivery of the final Car, Assignor shall issue to Assignee a fully-executed Certificate of Delivery in the form of Exhibit A hereto that shall contain the Delivery date of the Assignment Agreement with respect to all the Cars as determined by Assignor. Unless, within fifteen (15) days of the date of such Certificate of Delivery, Assignee demonstrates to the reasonable satisfaction of Assignor that such expiration date is incorrect, Assignee shall be deemed to have concurred with such dates.
4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.



5. Assignee shall load the Cars prior to loading any similar Cars leased by or assigned to Assignee from other parties subsequent to the date of this Assignment Agreement, purchased by Assignee subsequent to the date of this Assignment Agreement, or interchanged from other railroads; provided, however, that nothing contained in this Section shall in any event prevent or prohibit Assignee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor, and provided further, that Assignee shall not have to provide the Cars priority at the expense of unreasonably disrupting Assignee's normal operations.
6. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.
7. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
  - A. "Eligible Lines" is defined as the railroad lines owned and operated by Assignee as of the date of this Assignment Agreement. Any lines purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party, effective on the date of such sale, during the term of the Assignment Agreement are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow).
  - B. "Revenues" is defined as the total revenues earned and received or due for the use or handling of the Cars on the railroad lines other than the Eligible Lines, including but not limited to, per diem and mileage, whether or not collected and received by Assignor and undiminished by any claimed abatement, reduction or offset caused by any action or inaction of Assignee.
  - C. "Base Revenues" with respect to each Car shall be equal to \_\_\_\_\_ per Car per calendar quarter or applicable portion thereof ("Quarter"). Such Base Revenues for any partial Quarter shall be prorated per Car per day.
8. Assignee shall be entitled to full per diem and mileage relief for each Car while such Car is on the Eligible Lines and shall furnish interchange records to Assignor as requested.

9. Assignor shall be entitled to and shall retain the Cars, and Assignee thirty (30) days after receipt of Assignee's monthly statement indicating the total number of Cars loaded by Assignee with a destination off the Eligible Lines, a for each such loaded Car.
10. A. Upon any abatement, reduction or offset, as set forth in Subsection 7.B. hereinabove, Assignee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amount.
- B. If, at any time during the term of the Assignment Agreement, Assignee operates lines other than the Eligible Lines, then Assignee shall supply Assignor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on the other railroad lines operated by Assignee.
11. If, for any Quarter, Revenues earned by the Cars in the aggregate are less than the Base Revenues for all the Cars, then Assignor may so notify Assignee in writing. Within ten (10) days of receipt of such notice from Assignor, Assignee shall exercise the following option:
- A. to pay Assignor the difference ("Difference") between the Base Revenues for the Cars in the aggregate and the actual aggregate Revenues for the applicable Quarter, and agree to pay Assignor the Difference, if any, each subsequent Quarter for the duration of this Assignment Agreement. If Assignee elects this option, Assignee shall pay Assignor such Difference not later than sixty (60) days after notification that during the Quarter such Difference has occurred; or
- B. to elect not to pay Assignor such Difference for such Quarter. In such event, Assignor may thereafter terminate all or a portion of the Cars from this Assignment Agreement upon not less than ten (10) days' written notice to Assignee at any time during the duration of the Term.
12. Any agreement between Assignee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Assignor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.
13. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar railcars upon not less than ten (10) days' prior written notice to Assignee. Assignor will provide to Assignee, in writing, the reporting marks and car numbers of those Cars effected by such replacement.

14. Assignor is responsible for normal maintenance and repair expenses except as provided below and except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense. Assignee may make running repairs at Assignor's expense to those parts of the Cars specified in Exhibit B, attached hereto, to facilitate continued immediate use of each Car. Assignee shall be responsible for and shall pay all costs and expenses of all repair work or other work or materials required because of (i) damage or other conditions caused by Assignee's negligence or misuse in loading or unloading, or by use other than as permitted under this Assignment Agreement; (ii) damage for which Assignee is responsible under applicable AAR Rules; (iii) Assignee's failure to note any damage to any Car that returns to its lines, the repair of which is the responsibility under AAR Rules of any third party railroad. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any damaged Car that requires repairs other than running repairs, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.
15. Upon the expiration or termination of the Assignment Agreement, Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 145 and return each Car to Assignor (a) in the same or better condition, order and repair as when such Car was delivered to Assignee, ordinary wear excepted; and (b) free from all accumulations or deposits from commodities transported in or on such Car. Condition at termination or expiration shall be established at a joint inspection by Assignor and Assignee at a mutually agreeable time. Assignee shall return each Car to Assignor either (a) at an interchange point on Assignee's lines designated by Assignor, or (b) if Assignee secures a final load for such Car, to a point as near as possible to a point or points designated by Assignor not later than thirty (30) days prior to such termination or expiration, in which case, Assignee is not responsible for accumulations or deposits as a result of any final load. Until such Car is returned to Assignor, all amounts earned by such Car shall be paid to Assignor as additional rent and Assignor shall pay all costs and expenses on account of transportation or movement of such Car. If requested by Assignor, Assignee shall provide free storage, in a secure location, for a period of up to thirty (30) days for each Car, provided that risk of loss during such storage shall be Assignor's.
16. Assignee's rights shall be subject and subordinate to the rights of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars.

Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.

17. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

Hartford and Slocomb Railroad Company  
55 Francisco Street  
San Francisco, CA 94133  
Attention: Manager, Car Hire Accounting

If to Assignee:

Modesto and Empire Traction Co.  
530 Eleventh Street  
Modesto, California 95353

18. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
19. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

HARTFORD AND SLOCOMB RAILROAD  
COMPANY

MODESTO AND EMPIRE TRACTION  
COMPANY

By: \_\_\_\_\_

By: James L. Beard

Title: \_\_\_\_\_

Title: Pres & CEO

Date: \_\_\_\_\_

Date: 8-29-89

**EXHIBIT A**

**Certificate of Delivery**

Assignment Agreement dated \_\_\_\_\_, 1989 between  
**HARTFORD AND SLOCOMB RAILROAD COMPANY**, as Assignor and **MODESTO  
EMPIRE AND TRACTION COMPANY**, as Assignee.

Assignor's  
Reporting  
Marks and Numbers

Date Delivered  
to Assignee

The Initial Term of this Assignment Agreement shall expire on  
March 1, 1991.

**HARTFORD AND SLOCOMB RAILROAD COMPANY**  
Authorized Representative

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT B

Running Repairs: RBL Boxcars

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Gears
Brake Shoe Keys	Couple Carriers
Brake Connecting Pin	Center Plate Repair (Not Replacement of Center Plate)
Brake Head Wear Plates	Cotter Keys
Air Brakes	Roller Bearing Adapters
Hand Brakes	Air Hose Supports
Brake Beams and Levers	Load Divider Repairs (Not Replacement)
Truck Springs	
Door Hardware (Not Replacement of Door)	

EXHIBIT C

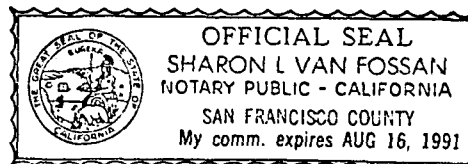
Running Repairs: RBL Boxcars

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
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Brake Shoe Keys	Couple Carriers
Brake Connecting Pin	Center Plate Repair (Not Replacement of Center Plate)
Brake Head Wear Plates	Cotter Keys
Air Brakes	Roller Bearing Adapters
Hand Brakes	Air Hose Supports
Brake Beams and Levers	Load Divider Repairs (Not Replacement)
Truck Springs	
Door Hardware (Not Replacement of Door)	

STATE OF CALIFORNIA       )  
                                      ) ss:  
COUNTY OF SAN FRANCISCO )

On this 23rd day of October, 1989, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President ~~and Chief Executive Officer~~ of Itel Rail Corporation, that the foregoing Schedule No. 13 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF ALABAMA       )  
                                      ) ss:  
COUNTY OF HOUSTON )

On this 9 day of September, 1989, before me personally appeared C. F. Fischer, III, to me personally known, who being by me duly sworn says that such person is President of Hartford and Slocomb Railroad Company that the foregoing Schedule No. 13 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joan Thompson  
Notary Public